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April 28, 1997

VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: Federal-State Joint Board on Universal Service  
CC Docket No. 96-45  
NOTICE OF WRITTEN EX PARTE PRESENTATION

Dear Mr. Caton:

On behalf of Cox Communications, Inc. ("Cox"), enclosed please find a written *ex parte* presentation discussing the eligibility of schools and libraries for universal service support. The positions discussed in this presentation are consistent with those taken by Cox in its comments filed in this docket. Please include this document in the public record.

In accordance with the requirements Section 1.1206(a) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office and copies are being provided to responsible staff, the Chairman's and each Commissioner's office.

Respectfully submitted,



Laura H. Phillips  
Counsel for Cox Communications, Inc.

LHP/cs

Enclosure

cc: Thomas Boasberg, Esq.  
James Casserly, Esq.  
Jim Coltharp, Esq.  
Dan Gonzalez, Esq.

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Mr. William F. Caton  
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**THE FCC SHOULD ADOPT THE JOINT BOARD'S RECOMMENDATIONS ON  
UNIVERSAL SERVICE SUPPORT FOR SCHOOLS AND LIBRARIES**

April 28, 1997

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- The language of the Telecommunications Act of 1996 (the "1996 Act") and its legislative history demonstrate that Congress intended for elementary and secondary schools and libraries to have maximum flexibility in purchasing telecommunications and advanced services.
  - The Joint Board's Recommended Decision concludes that Section 254 required school and library access to services (i.e., communications capability, Internet access and internal connections) from a broad range of telecommunications carrier and non-carrier providers. The Joint Board recognizes that Congress did not limit universal service support for schools and libraries to the core telecommunications services defined under Section 254(c)(1). Indeed, Congress specifically authorizes the Commission to "designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h)." 47 U.S.C. § 245(c)(3).<sup>1/</sup>
  - In addition to requiring support of core services in Section 254(c)(1) and additional services in Section 254(c)(3), Congress also specifies in Section 254(h)(2)(A) that the Commission "shall establish *competitively neutral* rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications *and information services* for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries[.]" (emphasis added).
  - The legislative history is equally definitive: "New subsection (h)(2) requires the Commission to establish rules to enhance the availability of

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<sup>1/</sup> "The Commission is given specific authority to . . . provide a different definition for schools, libraries, and health care facilities." S.CONF. REP. NO. 104-230, at 131 (1996) (the "Conference Report").

advanced telecommunications and information services to public institutional telecommunications users."<sup>2/</sup>

- The Joint Board recommends that the FCC adopt rules providing discounts for school and library Internet access pursuant to Section 254(h)(2)(A) without requiring that the information service provider first become a telecommunications carrier or disaggregate its communications link or conduit from the package of services it makes available.<sup>3/</sup>
- Concern has been expressed by incumbent LECs that it is "unfair" for non-carriers to qualify for reimbursement for provision of advanced services because non-telecommunications carriers are not obligated to contribute to universal service support. This position is simply an attack on *Congress'* decision to require certain providers (i.e., telecommunications carriers) to collect universal service funds from their subscribers while allowing a broader range of providers to draw on the fund for specific purposes to achieve an important Congressional objective.
- The "competitive neutrality" requirement for support of advanced services is applicable to *all* potential service providers. Section 254(h)(2)(A) is not limited to telecommunications carriers and explicitly provides support for services (*e.g.*, information services) that are offered by entities other than telecommunications carriers. Section 254(h)(2)(A) represents a Congressional choice to provide broader alternatives to facilitate deployment of advanced services to schools and libraries. By contrast, the universal service offset/reimbursement options mandated under Section

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2/ The legislative history states that:

the Commission could determine that telecommunications and information services that constitute universal services for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, States, and local governments, and information services which can be carried over the Internet.

Conference Report at 133.

3/ As the *Recommended Decision* observed: "Any attempt to disaggregate the network transmission component of Internet access from the information service component could serve to undermine the competitive forces that currently characterize the Internet access market at this time." Federal-State Joint Board on Universal Service, *Recommended Decision*, 12 FCC Rcd 87 at 323, ¶ 462 (1996).

254(h)(1)(B) are limited to the provision by telecommunications carriers of those core telecommunications and additional services (*not* including advanced services) described in Section 254(c)(1) and (c)(3). Thus, the requirement of competitive neutrality means that the advanced services offered by all providers to schools and libraries must be governed by Section 254(h)(2), not Section 254(h)(1).

- The Commission is not authorized to redefine Congress's instructions to establish competitively neutral rules for the provision of advanced services to schools and libraries by *all* providers, including entities that are not telecommunications carriers.<sup>4/</sup>
- Allowing telecommunications carriers reimbursement of discounts while denying reimbursement to alternative providers simply because of regulatory status would not be competitively neutral and would restrict, rather than enhance, access to advanced telecommunications and information services in violation of the explicit Congressional directives in Section 254(h)(2). Similarly, requiring an information services provider to become a telecommunications carrier in order to receive support to provide information services sets up unnecessary hurdles that will hamper efforts to provide advanced services to schools and libraries.
- As the Joint Board recognized, competition to provide advanced services under Section 254(h)(2)(A) will reduce the cost of these services for schools and libraries, and will produce greater variety and usefulness in the services provided. Maximum competition will occur only if all potential providers -- including non- telecommunications carriers -- are equally eligible for support in their delivery of advanced services to schools and libraries.

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<sup>4/</sup> Where "Congress has spoken directly and specifically . . . 'that is the end of the matter' and [the Commission must] 'give effect to the unambiguously expressed intent of Congress.'" *American Civil Liberties Union v. FCC*, 823 F.2d 1554, 1570 (D.C. Cir. 1987) (quoting *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). "[A]n agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear . . ." *MCI Tel. Corp. v. American Tel. & Tel. Co.*, 114 S. Ct. 2223, 2231 (1994).